IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.1055 OF 2005

WITH

CRIMINAL APPLICATION NO.330 OF 2006

Shri Kishor Vitthal More : Appellant.

versus

The State of Maharashtra : Respondent.

Mr.Sudeep Pasbola for the appellant.

Smt.U.V.Kejariwala, APP, for the State.

CORAM : D.G.DESHPANDE

V.K.TAHILRAMANI JJ.

DATED : APRIL 26, 2006.

ORAL ORDER

1. Heard Mr.Pasbola,learned counsel appearing for the appellant/accused and Smt.Kejariwal, learned APP, for the State.

2. This is an appeal filed by the appellant original accused. Learned counsel appearing for the appellant/accused made only one submission regarding sentence awarded to the accused. The accused was convicted by the trial Court for the offence punishable under section 307 of the Indian Penal Code and sentenced to suffer imprisonment for life and, under section 506(II) of the Indian Penal Code he was also convicted and sentenced to suffer imprisonment for life. Both the sentences were to run concurrently.

3. Counsel for the accused contended that when it is prosecution that accused inflicted only one blow with chopper and there was no evidence about hospitalisation of victim, then awarding of life imprisonment to the accused on both the counts is extremely harsh and is not at all in proportionately with the crime committed by him. Therefore, he prayed that considering the evidence on record, sentence may be reduced substantially.

4. We are given our anxious consideration to the submission made by the counsel for the

accused. The evidence of doctor, who examined the victim was also produced before us. In his evidence, the doctor has stated that the injury was on the left side of upper neck up to bone and there was suspected fracture to C4 vertebra. No other document was produced. The other injury was on the right index finger i.e. contuse lacerated wound. There was no evidence produced by the prosecution to show that how may days the victim remained in the hospital. According to the victim, he was in the hospital for twelve days. Therefore, considering this fact and in the absence of any antecedents, this appeal is required to be allowed partly. So far as sentence is concerned, in our opinion, imprisonment for seven years under both the offences would be sufficient to meet the ends of justice. Hence, we pass the following order :-

:ORDER:

Criminal Appeal No.1055 of 2005 is partly allowed. Conviction of the accused under Sections 307 and 506 (ii) is maintained. He is sentenced to suffer R.I. for seven years on both the counts. But both the

substantive sentences to run concurrently.

In addition, the appellant/accused to pay a fine of Rs.4000/- on each count i.e. under Sections 307 and 506 (ii) of the Indian Penal Code. If he fails to pay the fine, in default, he is sentenced to suffer S.I. for six months. If he pays fine, out of the total sum, Rs.5000/- shall be paid to the complainant/victim as compensation.

In view of this order the accused will be entitled for set off.

Since this appeal is disposed of, Criminal Application No.330 of 2006 does not survive. It is dismissed.

[D.G.DESHPANDE,J]

[V.K.TAHILRAMANI,J]